

CITY OF LYNNWOOD

ORDINANCE NO. 3373

AN ORDINANCE OF THE CITY OF LYNNWOOD, WASHINGTON, RELATING TO REGULATION OF DEVELOPMENT AGREEMENTS AND BINDING SITE PLANS; AMENDING CHAPTER 3.104; AMENDING CHAPTER 19.75; AND AMENDING CHAPTER 21.29; AND PROVIDING FOR SEVERABILITY, AN EFFECTIVE DATE AND SUMMARY PUBLICATION.

WHEREAS, the City of Lynnwood is a municipal corporation organized under the laws of the State of Washington; and

WHEREAS, RCW 36.70B.170-.210 authorize cities in Washington to enter into agreements governing the development of real property with a person having ownership or control of such property; and

WHEREAS, on March 14, 2005, the Lynnwood City Council passed Ordinance No. 2553 adopting the City Center Sub-Area Plan as an amendment to the City of Lynnwood Comprehensive Plan; and

WHEREAS, on July 10, 2006, the Lynnwood City Council passed Ordinance No. 2626 authorizing the use of development agreements, which provisions were codified as Chapter 1.37 LMC; and

WHEREAS, on August 12, 2019, the Lynnwood City Council passed Ordinance No. 3340 repealing Chapter 1.37 and replacing with Chapter 21.25, which limited flexibility through Development Agreements to the Regional Growth Center and City Center;

WHEREAS, flexibility through development agreements has been identified as being beneficial citywide; and

WHEREAS, the timelines established by the Chapter 19.75 Binding Site Plans are more restrictive than required by RCW 58.17.035; and

WHEREAS, as currently regulated, Development Agreements allow vesting rights which do not align with the current allowances of the Binding Site Plan code;

WHEREAS, the ability to align phasing and timelines for Development Agreements and Binding Site Plans improves customer service and responds to market needs; and

WHEREAS, on August 27, 2020, the Lynnwood Planning Commission held a public hearing on the revisions to the Lynnwood Municipal Code stated in this Ordinance, and all persons wishing to be heard were heard; and

WHEREAS, following the public testimony portion of the public hearing, the Planning Commission deliberated on the draft legislation and by regular motion voted to recommend that the Lynnwood City Council adopt the provisions of this Ordinance; and

40 WHEREAS, on DATE, the City Council held a public hearing on the revisions to the
41 Lynnwood Municipal Code stated in this Ordinance, and all person wishing to be heard were
42 heard; and

43 WHEREAS, the City Council after due consideration finds that the provisions of this
44 Ordinance are consistent with and implement the City’s Comprehensive Plan, are consistent with
45 applicable state law, and are to the best interest of the public health, safety and general welfare;
46 and

47 WHEREAS, the City Council finds that there are sufficient reasons to take action to
48 ensure that development agreement may be a development tool to provide adequate flexibility to
49 meet market demands while providing additional public benefits.
50

51 THE CITY COUNCIL OF THE CITY OF LYNNWOOD, WASHINGTON, DO
52 ORDAIN AS FOLLOWS:

53 **Section 1: Findings.** Upon consideration of the provisions of this Ordinance, the City Council
54 finds that the new code and amendments contained herein are: a) consistent with the
55 comprehensive plan; and b) substantially related to the public health, safety, or welfare; and c)
56 not contrary to the best interest of the citizens and property owners of the city of Lynnwood.

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58 **Section 2: Purpose.** The purpose of this ordinance is expand flexibility provided through
59 Development Agreements citywide. Flexibility through Development Agreements is currently
60 only permitted in the City Center and Regional Growth Center. Changes will also allow Binding
61 Site Plans to vest to Development Agreement timelines.

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63 **Section 3: LMC Title 19 Fees and Charges.** LMC 3.104.190 is amended to read as follows:

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65 **3.104.190 LMC Title 19 fees and charges.**

66 The fees and charges set forth in Table 3.104.190 are the city of Lynnwood fees and charges
67 related to the provisions of LMC Title 19.

Table 3.104.190 – LMC Title 19 Fees and Charges

Type of Fee		
LMC TITLE 19 – SUBDIVISION FEES		
Boundary line adjustment		1,500.00
Lot combination		1,500.00
Subdivision		15,000.00
Short subdivision	Creating two lots	2,000.00
	Creating 3-9 lots	7,500.00

Table 3.104.190 – LMC Title 19 Fees and Charges

Type of Fee		
LMC TITLE 19 – SUBDIVISION FEES		
<u>Preliminary Binding Site Plan</u>		<u>10,000.00</u>
<u>Final Binding Site Plan</u>		<u>5,000.00</u>
City Attorney Support	Actual cost	
Hearing Examiner	Actual cost	
Public Notice Requirements		
Posting costs	Hourly rate (posting notification on proposed project site and civic sites)	
Mailing costs	Actual cost of postage plus staff hourly rate	
Publication in newspaper	Actual cost	

69 **Section 4: LMC Title 21 Fees and Charges.** LMC 3.104.210 is amended to read as follows:

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3.104.210 LMC Title 21 fees and charges.

The fees and charges set forth in Table 3.104.210 are the city of Lynnwood fees and charges related to the provisions of LMC Title 21.

Table 3.104.210 – LMC Title 21 Fees and Charges

Type of Fee		
LMC TITLE 21 – ZONING FEES		
Accessory Dwelling Unit		500.00
Administrative Amendment (LMC 1.35.180)		1,500.00
Conditional Use Permits		5,000.00
<u>Development Agreements *</u>		<u>2,500.00</u>
<p><u>* Development Agreement fees are deposits to trust accounts to cover city attorney fees and public notice costs, which shall be paid from the deposit. Excess funds remaining after approval, denial or withdrawal of the development agreement application will be refunded to the applicant. City attorney fees and public notice costs that exceed the original deposit shall be charged to the applicant, who shall pay the excess costs within 30 days of receipt of an invoice from the City for the excess costs.</u></p>		
Essential Public Facility	Local	1,500.00
	Regional or State	20,000.00
Miscellaneous Plan Review	Fee for review not related to a permit (e.g., parking lot)	263.00
Parking Alternatives Review		1,500.00
Planned Unit Development (PUD)		10,000.00
Preapplication Meeting		200.00

*Fee credited towards development review

3.104.210 LMC Title 21 fees and charges.

The fees and charges set forth in Table 3.104.210 are the city of Lynnwood fees and charges related to the provisions of LMC Title 21.

Table 3.104.210 – LMC Title 21 Fees and Charges

Type of Fee		
LMC TITLE 21 – ZONING FEES		
charges.		
Project Design Review	Under 5,000 gross sq. ft.	3,500.00
	5,000 gross sq. ft. and above	15,000.00
Reclassification (Rezone)		10,000.00
Variance, Single-Family		500.00
Variance, Standard (Non-Single-Family)		3,000.00
Wireless Communication Facility (WCF)		5,000.00
Small wireless facility ¹ , permit review	Up to five small wireless facilities	500.00
	Each additional small wireless facility	100.00
Small wireless facility, right-of-way access and/or attachment to city-owned pole/structure	Per year, per pole/structure	270.00
Zoning Code Interpretation		1,000.00
Zoning Certification Letter		150.00
Signs with Searchlights	Per permit	86.00
City Attorney Support	Actual cost	
Hearing Examiner	Actual cost	

3.104.210 LMC Title 21 fees and charges.

The fees and charges set forth in Table 3.104.210 are the city of Lynnwood fees and charges related to the provisions of LMC Title 21.

Table 3.104.210 – LMC Title 21 Fees and Charges

Type of Fee

LMC TITLE 21 – ZONING FEES

Public Notice Requirements

Posting costs	Hourly rate (posting notification on proposed project site and civic sites)
Mailing costs	Actual cost of postage plus staff hourly rate
Publication in newspaper	Actual cost

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74 **Section 5: Chapter 19.75.060 Binding Site Plan Amendments – Timing and Flexibility.**

75 LMC 19.75.060 is amended to read as follows:

76 **19.75.060 Time limits, extensions, and effect of preliminary binding site plan approval, and**
77 **flexibility through development agreements.**

78 A. The city shall approve, approve with conditions, disapprove or return to the applicant for
79 modification all binding site plans within 90 days from the date of filing thereof unless the
80 applicant consents to an extension of time; provided, that if an environmental impact statement
81 (EIS) is required pursuant to Chapter [43.21C](#) RCW, or other environmental studies required for a
82 determination of nonsignificance, or if a variance or other similar applications are required, the
83 90-day period shall not include time spent preparing and circulating a required EIS, or the time
84 required for processing the other application(s).

85 ~~B. The applicant shall have three years from the date of preliminary approval to submit to the~~
86 ~~city a final binding site plan meeting all requirements of this chapter. Failure to do so will result~~
87 ~~in the expiration of preliminary binding site plan approval. However, an applicant who files a~~
88 ~~written request with the mayor's office at least 30 days before the expiration shall be granted one~~
89 ~~one-year extension upon a showing that the applicant has attempted in good faith to submit the~~
90 ~~final binding site plan within the three-year period.~~

91 BC. Approval of a preliminary binding site plan by the mayor is approval of the proposed
92 binding site plan's design, and relationship with adjoining property. The engineering,
93 construction and installation of improvements and final detail shall be subject to approval of the
94 public works director. Approval of the preliminary binding site plan shall authorize the applicant
95 to proceed with the preparation of the final binding site plan in conformance with the approved
96 preliminary binding site plan and the conditions stipulated. Upon the approval of detailed
97 construction plans by the public works director, construction and installation of the
98 improvements may proceed.

99 C. The applicant shall have three years from the date of preliminary approval to submit to the
100 city a final binding site plan meeting all requirements of this chapter, except as authorized by
101 LMC 19.75.060.D. Failure to do so will result in the expiration of preliminary binding site plan
102 approval. However, an applicant who files a written request with the mayor's office at least 30
103 days before the expiration shall be granted one one-year extension upon a showing that the
104 applicant has attempted in good faith to submit the final binding site plan within the three-year
105 period.

106 D. Binding site plan review and approval procedures may be revised for flexibility when
107 associated with an approved development agreement, including modification or deferral of
108 submittals required by LMC 19.75.035.B.7. When associated with an approved development
109 agreement, time limits for preliminary and final binding site plan must be established at the time
110 of preliminary binding site plan approval. The city may require the applicant to submit a single
111 preliminary binding site plan showing the full extent of the project. The city may approve several
112 subsequent final binding site plans to be recorded in phases. In no case shall the time frames for
113 the binding site plan exceed the time frames of the development agreement.

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116 **Section 6: Chapter 19.75.065 Binding Site Plan Amendments – Improvements.** LMC

117 19.75.065 is amended to read as follows:

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119 **19.75.065 Methods and procedure for carrying out improvements.**

120 If the preliminary binding site plan is approved by the mayor, the city may accept a bond or other
121 secure method providing for and securing to the city the actual construction and installation of
122 minimum improvements in accordance with the provisions of LMC 19.75.105 within one year
123 by any of the following methods, except where modified in accordance with the provisions of
124 LMC 19.75.060.D:

125 A. By furnishing the city of Lynnwood with a performance bond satisfactory to the city attorney,
126 in which guarantee is given the city that the installation of the minimum improvements will be
127 carried out as provided in LMC 19.75.060 herein and in accordance with city specifications
128 within one year;

129 B. By actual installation of improvements in accordance with the provisions of LMC 19.75.060
130 contained herein and in accordance with the installation requirements and under the supervision
131 of appropriate city departments and furnishing a bond approved by the city attorney securing
132 successful operation of the improvements for a period of 24 months following completion and
133 acceptance thereof by the city;

134 C. By formation of a local improvement district;

135 D. By a cash deposit with the city or suitable escrow;

136 E. By a combination of these methods; and

137 F. By such other reasonable guarantee acceptable to the city attorney.

138 The applicant may then make application for such permits from the local officers, officials and
139 authorities as are necessary to proceed with the installation of the binding site plan
140 improvements.

141 After completing all minimum improvements, the applicant shall make a request to the
142 appropriate department for inspection. After finding that all improvements have been completed
143 or provided for in accordance with the installation standards, the appropriate department shall so
144 notify the community development director.

145 If applicant uses another approved method for carrying the improvements out, the appropriate
146 department will so notify the community development director.

147 Upon receipt of this notification, the community development director shall advise the applicant
148 that a final binding site plan may be submitted for that portion of the area contained in the
149 proposed binding site plan, or dedication in which minimum improvements have been installed
150 or concerning which a performance bond or other acceptable surety has been posted. The
151 applicant may then submit the final binding site plan application in accordance with LMC
152 19.75.070. (Ord. 2463 § 15, 2003)

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154 **Section 7: Chapter 21.29 Development Agreement Amendments.** LMC 21.29 is amended to
 155 read as follows:

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157 **21.29.010 Purpose.**

158 Certainty in the development review process can significantly encourage development or
 159 redevelopment of real property. This certainty is especially important for large-scale or
 160 multiphase developments that take years to complete and that require substantial financial
 161 commitments at an early stage. The city may, when appropriate, enhance certainty by entering
 162 into a development agreement with a project sponsor that addresses the “ground rules” for
 163 review of the development application and construction of the project. A development agreement
 164 provides the opportunity for the city and the developer to agree on the scope and timing of the
 165 project, applicable regulations and requirements, mitigation requirements and other matters
 166 relating to the development process. A development agreement promotes the general welfare by
 167 balancing the public and private interests, providing reasonable certainty for a development
 168 project, and addressing other matters, including reimbursement over time for the financing of
 169 public facilities.

170 **21.29.020 Authority.**

171 A. Pursuant to RCW 36.70B.170 through 36.70B.210, the city council may approve and enter
 172 into a development agreement with any person, partnership, corporation or other entity that
 173 controls real property within the city or within the city’s urban growth area.

174 B. The city council may approve and enter into a proposed development agreement if the council
 175 finds, in its sole discretion, that the proposed agreement is consistent with the city’s
 176 comprehensive plan, the development regulations and the purpose of this chapter, and that
 177 entering into the agreement is in the city’s best interest.

178 **21.29.030 Agreement contents.**

179 A proposed development agreement shall, at a minimum, include provisions required by
 180 RCW 36.70B.170 through 36.70B.210, and shall set forth the development standards and other
 181 provisions that shall apply to and govern the use and development of the real property for the
 182 duration specified in the agreement. An agreement may also contain such other provisions as the
 183 city and the property owner or person controlling the property may mutually agree on, such as,
 184 but not limited to, the financing for or timing of mitigation and the vesting of development
 185 rights. A development agreement shall be consistent with applicable development regulations,
 186 including this chapter.

187 **21.29.040 Public notice.**

188 A. The applicable department director shall distribute the notice at least 20 calendar days
 189 before the hearing in the following manner:

- 190 1. Publishing the notice in the official newspaper of the city (LMC 1.08.010);
- 191 2. Posting the notice at the official posting place(s) of the city (LMC 1.12.010) and at
 192 the subject property so that the notice is readable from all adjacent public streets; and

193 3. Mailing the notice by regular mail to owners of property within at least 600 feet of the
194 boundary of the subject property.

195 B. The notice requirement(s) of this section shall be satisfied by substantial compliance with
196 such requirements.

197 **21.29.050 Public hearing.**

198 A. Prior to acting on a proposed development agreement, the city council shall hold a public
199 hearing on the proposed agreement, at which time all those wishing to speak shall be heard. The
200 applicable department director shall prepare a notice of the public hearing that contains the
201 following:

- 202 1. Name of the property/project to which the agreement would apply;
- 203 2. Street address and/or a description of the property in nonlegal terms;
- 204 3. Statement that a development agreement is proposed for the subject property and
205 reference to this chapter;
- 206 4. Brief summary of the proposed development agreement;
- 207 5. Date, time and place of the hearing; and
- 208 6. Statement of the right of any person to participate in the hearing.

209

210 ~~**21.29.070 Decision criteria.**~~

211 ~~The city council may approve and enter into a proposed development agreement if the council~~
212 ~~finds, in its sole discretion, that the proposed agreement is consistent with the city's~~
213 ~~comprehensive plan, the development regulations and the purpose of this chapter, and that~~
214 ~~entering into the agreement is in the city's best interest.~~

215 **21.29.090 Recording.**

216 The applicant shall be responsible to record the agreement with the Snohomish County pursuant
217 to RCW 36.70B 190. The development agreement shall include a provision that requires the
218 applicant to record the agreement with the Snohomish County Auditor's Office.

219 **21.29.100 Mobile home park preservation.**

220 The owner of an existing mobile home park that is identified in policy MH-1 of the
221 comprehensive plan may preserve the mobile home park pursuant to a development agreement
222 that:

223 A. Is processed and approved in accordance with this chapter;

224 B. Preserves and maintains the mobile home park for a minimum term of five years, which term
225 shall renew automatically for additional periods as agreed to by the city and the owner, unless
226 the owner notifies the city and the residents and occupants of the mobile home park in writing of
227 termination of the development agreement at least one year before the termination date;

- 228 C. Includes special rates for water, surface water and sewer service as set forth in this code;
- 229 D. Waives all permit, approval, processing and inspection fees for any construction or repair to
- 230 maintain, operate or improve the mobile home park during the agreement period, and renewals
- 231 thereof; and
- 232 E. Contains additional terms and conditions that are agreed to by the owner and the city council.

233 **21.29.200 Development agreement in the Regional Growth Center or City Center.**
 234 **Decision Criteria.**

235 ~~The City Council may utilize development agreements on properties located within the~~
 236 ~~designated Regional Growth Center as adopted by the Puget Sound Regional Council or the~~
 237 ~~Lynnwood City Center.~~

238 A. ~~Additional~~ Criteria for Approval. ~~For development agreements within the Regional Growth~~
 239 ~~Center and/or City Center, in addition to the criteria of LMC 21.29.070, t~~The City Council
 240 may enter into an development agreement if the following criteria are met:-

- 241 1. The development agreement must be consistent with the comprehensive plan and
 242 any applicable subarea plan ~~the City Center Subarea or Regional Growth Center~~
 243 Plan;
- 244 2. The agreement must provide public benefits, including but not limited to those
 245 provided in LMC 21.29.200.C, that would not otherwise be achieved under the
 246 Code; ~~and~~
- 247 3. The City Council determines the agreement serves the public interest, including
 248 but not limited to achieving ~~the City Center Subarea~~ the comprehensive plan and
 249 any applicable subarea plan or Regional Growth Center Plan policies ~~vision;~~
- 250 4. The property is not zoned single-family residential; and
- 251 5. The agreement must be consistent with the purpose of this chapter.

252 B. Flexibility. The development agreement may provide flexibility to the following:

- 253 1. ~~Flexible~~ Development Regulations. The development agreement may provide
 254 flexibility in the development regulations by proposing alternative requirements as
 255 agreed to by City Council. In no case shall the development agreement allow uses
 256 that are not otherwise permitted under this title.
- 257 2. Public Infrastructure Requirements. The development agreement may allow
 258 modifications to public infrastructure standards to achieve project implementation.
- 259 3. Timing. The development agreement may provide flexibility in timing for any
 260 division of land, land use, or construction permit review, approval, expiration, or
 261 extension requirements.

262 A. Public Benefits. The City Council may seek to balance flexibility for development with
 263 additional public benefits by incorporating public benefit elements into the development

264 agreement. The development agreement may include, but need not be limited to, benefits
265 such as the following:

- 266 1. Sustainability. The support of sustainability may be sought by including any of the
267 following:
- 268 a. Green Building standards such as USGBC LEED or equivalent are incorporated
269 into the development. The level of certification may be determined at time of
270 development agreement approval.
- 271 b. Electric Vehicle Charging Stations are provided throughout the development
272 and are made available to the public.
- 273 c. Greenhouse Gas (GhG) inventories are conducted annually and reported to the
274 City of Lynnwood.
- 275 2. Affordable Housing. The development may be required to provide a portion of units
276 to be affordable housing, as defined by RCW 84.14.010 units. The range of income
277 qualifications, number of units, and term length shall be determined at time of
278 development agreement approval;
- 279 3. Park and Open Space. Development may be required to dedicate a portion of land for
280 the use of parks and open space as consistent with the adopted ~~Pparks-, Rrecreation,~~
281 Oopen Sspace Pplan and/or city center parks plan or any other applicable parks plan.
282 Land dedication may be used to offset Park Impact Fees per LMC 3.107;
- 283 4. Economic Benefits. The City Council may require an Economic Benefits Analysis to
284 be conducted prior to or following the adoption of the development agreement;
- 285 5. Public Infrastructure. The development agreement may outline public infrastructure
286 improvements that ~~serve the City Center and~~ are provided by the developer. These
287 projects may be credited to applicable service, connection, or impact fees;
- 288 6. Public Art and Placemaking. The development agreement may outline elements of
289 public art and other placemaking methods that exceed currently adopted
290 requirements; or
- 291 7. Other Public Benefits. The agreement may include other public benefits as proposed
292 by an applicant and approved by the City Council.

293

294 **21.29.300 Previously approved land use agreements.**

295 Previously approved land use agreements including, but not limited to, contract rezones and
296 concomitant zoning agreements shall be terminated concurrent with the approval of a
297 development agreement applicable to the same property. Any amendments or other changes to an
298 approved contract rezone, concomitant zoning agreement, or other land use agreement, shall be
299 adopted as a development agreement.

300 Section 6. Effective Date: This ordinance or an approved summary thereof consisting of its
301 title shall be published in the City's official newspaper of record and shall take effect and

302 be in full force five days following its publication.

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305 Section 8. Severability. If any section, sentence, clause or phrase of this ordinance should
306 be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or
307 unconstitutionality shall not affect the validity or constitutionality of any other section, sentence,
308 clause or phrase or word of this ordinance.

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PASSED BY THE CITY COUNCIL THIS 28th day of September 2020.

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APPROVED:

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DocuSigned by:
nicola smith
281B3CE79E884DA...
Nicola Smith, Mayor

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ATTEST/AUTHENTICATED:

APPROVED AS TO FORM:

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DocuSigned by:
Karen Fitzthum
549561C7EC99433...
Karen Fitzthum, Acting City Clerk

DocuSigned by:
Rosemary A Larson
B235AB973133428...
Rosemary Larson, City Attorney

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PASSED BY THE CITY COUNCIL: 09/28/2020
PUBLISHED: 10/10/2020
EFFECTIVE DATE: 10/15/2020

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